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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,558	07/31/2003	Barry Reisberg	0545/015	2584
22440	7590	03/25/2005	EXAMINER	
GOTTLIEB RACKMAN & REISMAN PC 270 MADISON AVENUE 8TH FLOOR NEW YORK, NY 100160601			ASTORINO, MICHAEL C	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/632,558		REISBERG ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Michael C Astorino		3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

1. Claims 1-2 are objected to because of the following informalities:

#### **In regards to claim 1:**

The claims are only to have one “.” at the end of the claim. The applicant should replace the “.” with “;”

The use of quotation marks should not be used in the claims. This includes “axioms”, “postulates”, and “caveats”;

#### **In regards to claim 2:**

In lines 1-2, “wherein said axioms are selected from the following:” should be changed to “wherein said axioms are selected from the group consisting of:”;

In line 2, the language “These axioms include the following:” should be removed from the claim;

the claims are only to have one “.” at the end of the claim. The applicant should replace the “.” with “;”;

the use of quotation marks should not be used in the claims, particularly “taste”; and

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**In regards to claim 1:**

Claim 1 is written in a passive voice. Method claims should be written in an active voice. For example the use of the word(s) and phrase(s) “can”, “cannot”, “alternative”, “can, to some extent.” Additionally, the limitations claim 1, lines 6-19, the applicant states “this is accomplished by the following...”, then lists five procedures. The quoted language should be amended to affirmative language so the examiner can properly identify the scope of the claim language. For example, if the all of the procedures are to be claimed, then the applicant can claim as a replacement for “(b)”, “(b) Translation of each of the FAST, BCRS and GDS staging elements into corresponding developmental ages (DAs) by the following procedures.”

In addition, the examiner cannot discern whether applicant is claiming the five procedures conjunctively or disjunctively. For example, if the applicant wants to claim all of the procedures (conjunctive) he should use “and” after a semi-colon at the end of the fourth procedure. The same type of changes should be made for limitation “(f)” and “(g).”;

The use of parenthesis, in page 23, claim 1, line 4, “(emotional, physical and cognitive)” is indefinite because it is unclear if the applicant is claiming that limitation; and

The use of the word “novel” in claim language in limitation “(g)” must be excluded from the claim.

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**In regards to claim 2:**

“i.e., likes and dislikes” should be removed from the claim;

**In regards to claim 3:**

It is unclear to the examiner if “including the following” in line 2, means one of the limitations or all of the limitations. The quoted language should be amended to affirmative language so the examiner can properly identify the scope of the claim language.

“The kind of activities which children find frightening or upsetting...”, “...and related retrogenic dementia patients find upsetting...”, “The kind of activities which a child considers “childish” or “baby like”...”, “...and related retrogenic dementia patients may find humiliating...”, “The kind of activities which promote healthy and optimal...”, and “are similarly the kinds of activities...” are vague at least because the scope of claim indefinite by using language that is speculative.

Lastly, the use of quotation marks should not be used in the claims, particularly “childish” or “baby like”.

**Note to the applicant.** The examiner has performed a prior art search and has not found any prior art to reject the applicant’s invention. However, the examiner reserves stating that the claims are allowable over the prior art since the numerous 35 U.S.C. 112, second paragraph, rejections have made it extremely difficult to ascertain the scope of the claimed language.

***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kluger et al. 6,067,986 A, Souren-Franssen et al. US Patent Number 5,782,777 A, Franssen et al. US Patent Number 5,150,716 A, and Sclan et al. US Patent Number 5,082,446 A.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C Astorino whose telephone number is 571-272-4723.

The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Astorino  
March 21, 2005